

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:RFP:STP:TL-N-6648-00
JForsberg

date: March 8, 2001

to: Marcy Defiel, Manager, Case Processing Support
St. Paul, Minnesota

from: Associate Area Counsel (LMSB)
St. Paul, Minnesota

subject: [REDACTED]
Claim for Interest on [REDACTED] Overpayment

Our advice has been requested as to the date interest began to accrue on the overpayment of tax for [REDACTED]'s taxable year [REDACTED]. For the reasons discussed below, we believe that interest did not begin to accrue on the overpayment until [REDACTED].

FACTS

[REDACTED] (EIN # [REDACTED]) (" [REDACTED] ") is the parent corporation of a group of corporations which file consolidated returns. [REDACTED] has a taxable year ending [REDACTED].

[REDACTED] (EIN # [REDACTED]) (" [REDACTED] ") was the parent corporation of a group of corporations which filed a consolidated return for the TYE [REDACTED]. Pursuant to extension, [REDACTED]'s [REDACTED] return was timely filed on or about [REDACTED]. The [REDACTED] return showed a tax liability of \$ [REDACTED] and an overpayment of \$ [REDACTED] which [REDACTED] elected to apply to its [REDACTED] estimated tax liability. [REDACTED] made the election to apply the overpayment to its [REDACTED] estimated tax liability on line 36 of its [REDACTED] Form 1120.¹ There were no other instructions or statements contained in or attached to the Form 1120 respecting how the overpayment was to be applied. Pursuant to [REDACTED]'s election, [REDACTED]'s [REDACTED] overpayment was transferred to its [REDACTED] account.

[REDACTED] was acquired by [REDACTED] on [REDACTED]. [REDACTED] thereby became part of the [REDACTED] consolidated group and was included in the consolidated return filed by [REDACTED] for the TYE [REDACTED].

¹ Line 36 as filled in on the Form 1120 read: 36 Enter amount of line 35 you want: Credited to [REDACTED] estimated tax [REDACTED]. Refunded [REDACTED] NONE.

█████. █████ did not file a short-year return for the period ending January 3, █████.²

The Form 851 (Affiliations Schedule) attached to █████'s █████ Form 1120 showed █████'s █████ overpayment of \$█████ as a prepayment credit to be applied to █████'s █████ liability. A Form 1120X dated █████, filed for █████'s TYE █████ also listed █████'s █████ overpayment as a credit to be applied █████'s █████ liability.

On █████, █████ was contacted by the Service Center with respect to its failure to file a return for the TYE █████ and the credit balance on its account for that year. By a letter dated █████, █████ notified the Service Center that it had acquired █████ and requested the █████'s █████ overpayment be applied to █████'s liability for the TYE █████. The Service Center thereupon transferred the █████ overpayment to █████'s TYE █████ as a prior period overpayment with a credit date of █████.

On █████, █████ filed a claim for interest on the overpayment for █████'s TYE █████ from █████ to █████, the date the overpayment was credited to █████'s account.

DISCUSSION

█████'s claim seeks interest on █████'s █████ overpayment from █████, the due date of █████'s █████ return, to █████, the date the overpayment was credited to █████'s account. We believe there are two ways in which this issue could be analyzed. The first, consistent with the election made on █████'s █████ Form 1120, assumes that the █████ overpayment should have been applied to █████'s █████ estimated tax liability. The second, consistent with the taxpayer's apparent intent, assumes that the █████ overpayment should have been applied to █████'s █████ estimated tax liability. We believe that under either scenario overpayment interest does not begin to accrue until █████.

Assuming that the █████ overpayment was properly applied to █████'s █████ estimated tax liability, the overpayment should be

² We are unaware of any basis for █████'s failure to file a short-year return for the period ending █████. Prior to █████, the so-called "30-day rule" of former Treas. Reg. 1.1502-76(b)(5) provided that a corporation which became a member of a consolidated group within the first 30 days of the corporation's taxable year could elect to be a member of the group as of the beginning of the corporation's taxable year and not file a short-year return. The 30-day rule, however, was eliminated effective █████. See, T.D. 8569.


treated as a payment made for [REDACTED]'s [REDACTED] tax liability as of [REDACTED], the due date of [REDACTED]'s [REDACTED] return and, accordingly, no overpayment interest could accrue earlier than that date. I.R.C. §§ 6151, 6513(b)(2)&(d), and 6611(d).

Alternatively, if the [REDACTED] overpayment were applied to [REDACTED]'s [REDACTED] estimated tax liability (as appears to have been the taxpayer's intent) the result would be the same. No interest would accrue to [REDACTED] since the overpayment would have been treated as a payment by [REDACTED] and would have been applied to [REDACTED]'s estimated tax liability as of the date of the overpayment. From [REDACTED]'s perspective, the overpayment would be treated as an estimated tax payment made for [REDACTED]'s [REDACTED] tax liability. As such it should be treated as having been paid on [REDACTED], the due date of [REDACTED]'s [REDACTED] return.

We believe that the taxpayer's reliance on Rev. Proc. 65-20, 1965-2 C.B. 1003 is inapposite. The taxpayer argues that Rev. Proc. 65-20 stands for the proposition that where an overpayment is credited to another taxpayer's account, the taxpayer is entitled to interest on the overpayment from the date the overpayment arose. Rev. Proc. 65-20 modified paragraph (5)f of section 3.02 of Rev. Proc. 60-17, 1960-2 C.B. 942. Paragraph (5) sets out the rules applicable in applying the tables in paragraphs (3) and (4) of section 3.02. The tables in section (3) and (4) of Rev. Proc. 60-17 do not address overpayments credited to a subsequent year's estimated tax liability. Furthermore, the situation specifically addressed in Rev. Proc. 65-20 deals with an overpayment applied to the deficiency of a different taxpayer, not the estimated tax liability of a different taxpayer. We believe that an estimated tax payment made by the transfer of an overpayment credit from another taxpayer's account is subject to the provision of I.R.C. §§ 6513(b)(2)&(d) and 6611(d) to the same extent as if made directly by the taxpayer.

If you have any questions respecting this matter, please call Jack Forsberg at (651) 290-3473, ext. 227.

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By: 
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cc: Associate Chief Counsel (Procedure and Administration)
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